CITY HALL COUNCIL CHAMBERS
SANTA MARIA, CALIFORNIA
SPECIAL MEETING

AUGUST 8, 2005

INVOCATION:
Assistant City Manager Haydon gave the invocation.

PLEDGE OF ALLEGIANCE TO THE FLAG:
Councilmember Mariscal led the pledge of allegiance.

CALL TO ORDER:
Mayor Lavagnino called the Special Meeting of the City Council to order at 6:30 p.m.

ROLL CALL:
MEMBERS PRESENT
Councilmembers Mariscal, Orach, Patino, and Mayor Lavagnino.

MEMBERS ABSENT:
Councilmember Trujillo.

STAFF MEMBERS PRESENT
City Manager Ness, Assistant City Manager Haydon, City Attorney Trujillo, Police Chief Macagni, Director of Public Works Karp, Director of Utilities Chisam, Senior Civil Engineer Nybo, City Engineer Sweet, Utilities Business Services Manager Reyburn, and Chief Deputy City Clerk Perez.

Also present were Attorneys Jeff Dunn and Eric Garner from Best, Best, and Kreiger.

PUBLIC COMMENT
There were none at this time.

PRESENTATION REGARDING THE RECENT GROUNDWATER STIPULATION SETTLEMENT AGREEMENT.
Director of Utilities Chisam presented an overview of the Groundwater Stipulation Settlement Agreement using PowerPoint slides. The Santa Maria Valley Water Conservation District initiated the current groundwater litigation on July 14, 1997. The litigation moved slowly through the courts and many legal proceedings have occurred. In July 2004, the City of Santa Maria and the Water Conservation District reached a tentative settlement agreement. This action prompted Judge Komar to mandate another round of settlement discussions between the parties. This resulted in the creation of a stipulation that will settle the litigation between the stipulating parties. Those parties that refused to sign the stipulation would continue to litigate the case. It was anticipated that the majority of the parties involved in this case would approve and sign this stipulation.

This stipulation provides the stipulating landowners with a permanent overlying water right within native safe yield levels. In addition, the stipulation provides the City with permanent water rights that allow for sufficient water resources for future generations. The stipulation contains language about the use of water and describes the physical solution that will maintain the health of the groundwater basin through monitoring and management. The stipulation envisions three management areas: (1) Santa Maria Valley Management Area; (2) Northern Cities Management Area (Five Cities); and (3) Nipomo Mesa Management Area.

The stipulation also outlines monitoring and management of the Santa Maria Valley Groundwater Basin by a newly created Twitchell Management Authority. The Twitchell Management Authority will manage and administer all new projects to maintain the Twitchell Project yield. The initial budget for the Twitchell Management Authority will be $500,000 to $700,000 a year. The Water Conservation District will maintain their

current practice of day-to-day operation of the Twitchell Project pursuant to a newly created operations and maintenance manual. Also, the stipulation provides a plan for response to severe water shortage conditions and new urban water uses within the Santa Maria Valley Management Area.

The physical solution provision of the Santa Maria Valley Management Area includes a determination of water rights to sources of supply. The Twitchell yield is approximately 32,000 acre feet. Landowners will receive 20 percent of the yield. The water purveyors will receive 80 percent of the Twitchell Project yield, along with the imported water supply and State Water return flows. The City agrees to import 10,000 acre feet of State Water annually if available. These total supplies will result in an annual water allocation of approximately 44,000-acre feet per year for the City in addition to available surplus water supplies. The current build-out water demand is projected to be plus or minus 21,000 acre feet.

Eric Garner, one of the attorneys representing the City, read comments from Judge Komar who was the arbitrator and trier of fact in the case and has presided over the settlement discussions, stipulation, and will be the trier of fact as this goes forward to trial. The first are his comments from July 7th: "I think I indicated on the record that I thought that having a stable source of water, a mechanism for determining when the Valley was at risk, and a mechanism for dealing with that risk, was a very valuable benefit. By virtue of this settlement, there is no question that the tentative decision of the court that there are no prescriptive rights obtained, becomes binding upon all parties to the settlement so there is no risk of prescription nor is there a risk of prescription in the future to the parties who sign the agreement in as much as all water use is consensual. It seems to me there are a multitude of benefits that any of the parties that have entered into this settlement or agreed to enter into this settlement will receive with the certainty that you never get when you are viewing the trial in the future with all the vicissitudes of litigation. The settlement process has been lengthy, but I think the people who live in the Valley and who will benefit from this resolution owe a great debt to the legal counsel who spent so much time and energy and thought in arriving at a settlement with so many issues and so many issues to resolve." The second comments are from Judge Komar's order signed on August 3rd: "The Court finds that the settlement stipulation was negotiated in good faith, that its terms are reasonable, that it provides certainty to the parties, that it is a physical solution that protects the water resource and the rights and interests of all parties, that it provides flexibility for changing conditions, that it provides for judicial supervision through continuing jurisdiction of the court, that it logically divides the Basin into three separate management sub-areas that will resolve current and future water issues in each sub-area, that it establishes an effective political solution to the actual and potential problems of this groundwater basin, and it constitutes a reasonable compromise of disputed claims and defenses."

Councilmember Orach asked if the City's commitment to import 10,000 acre feet of State Water annually was a base line amount.

Director Chisam explained that there was a belief from some that the City might want to sell some of its State Water entitlement now that it had additional water through the stipulation agreement. The City currently imports more than 10,000 acre feet of State Water when it can. The City will continue to import as much water as possible because it is vital for water quality to import as much State Water as possible.

Mayor Lavagnino opened the discussion up to questions or comments from the public.

Jacqueline Frederick, attorney for Nipomo landowners, asked for an explanation regarding the Memorandum of Understanding with Nipomo for the sale of water.

Director Chisam explained it was a wholesale water sales agreement where the City would provide water to the community of Nipomo on prices, terms and conditions outlined in the Memorandum of Understanding (MOU). The citizens of Nipomo would have a large meter, just like anyone else within the service area. It would be Nipomo's responsibility to move that water from the meter to their service area. Currently the Environmental Impact Report is underway with regard to the various alternatives to

providing the pipeline structures necessary to get the water up to the Nipomo Mesa. The current amounts of the water vary over time. Right now the maximum amount of water that is contained in the MOU is 3,000 acre feet, and there is a price for that water that Nipomo Community Services District has agreed to pay to import that water from the City.

Toru Miyoshi stated he was surprised to hear the Twitchell allocation of water. He said he thought he read in the paper that the farmers were claiming 100 percent of the recharge from the Twitchell project.

Director Chisam explained the stipulation agreement indicates that the 32,000 acre feet associated with the Twitchell project will be allocated to the parties who have historically and traditionally paid for that project. Historically, the residents within the boundaries of Santa Maria have paid close to 80 percent of that project, while the landowners outside the City boundaries have paid 20 percent.

Mr. Miyoshi stated that was his concern since the beginning of the lawsuit because the City of Santa Maria and the urban areas were the biggest contributors to the Twitchell Project. He asked if the City was covered by insurance for this lawsuit by the Water Conservation District to help pay the legal fees.

Eric Garner responded the City did seek insurance coverage for the case, and coverage was rejected by the insurance carrier. The City has not been covered by insurance for any of the lawsuit.

Mr. Miyoshi asked how much the lawsuit was costing on a per customer basis. He said it was only perpetuating the high cost of water to the City of Santa Maria. He also asked if there was someway to make those parties that didn't sign the stipulation agreement pay the City's legal fees.

Director Chisam responded that the cost to the customer was about $1.80 per month.

Jeff Dunn stated for those parties that fail to sign the stipulation agreement or enter into the settlement agreement, one of the risks that they will face is that they will incur the court costs of the City and the other municipal purveyors, in the event that the municipal purveyors are able to establish their claims or rights to water in this next phase of the trial. Those costs could include the attorneys fees incurred by the municipal purveyors. Our advice would be for the City to seek those attorneys fees and costs from the non-stipulating parties.

Herb Gerfen stated there was a mention of three sub-areas and asked what those sub-areas were.

Director Chisam explained the three sub-areas were the Nipomo Mesa area, the Santa Maria Valley area, and the northern cities which is the Five Cities, Lopez Project area, including Arroyo Grande, Grover Beach, and Oceano.

Mr. Gerfen asked for copies of the stipulation, copies of the presentation, and copies of the MOU with Nipomo.

Cameron Miller, member of the Board of Directors of the Santa Maria Water Conservation District, referenced an article in the paper where Director Chisam was quoted as saying "Santa Maria has agreed to provide water supplies to the neighboring communities of Orcutt and Nipomo. The City agreed to accept this responsibility to forge a workable, physical solution to end the long and costly groundwater lawsuit." He asked how agreeing to supply water to Nipomo helped bring the lawsuit to closure?

Director Chisam explained the issue for any developing, urban community is to have access to water supplies that are necessary in order to meet their future growth and development demands. In order to get a physical solution, to have those resources available to them to meet those demands in the future, was essential for them to sign onto an agreement. By the City agreeing to provide water resources to them, they

could see their way clear to sign the stipulation and provide the kinds of assurances the City wanted, that other neighboring communities were not going to benefit from enhancements and improvements the City had made to the groundwater basin through the importation of water without paying their fair share of the total costs of those projects.

Mr. Miller stated his concern with the MOU with Nipomo was that the spirit of the settlement agreement was that there would be enough water for all, including the landowners, the farmers and the cities. He ask how the City could approve an MOU with Nipomo when the City of Santa Maria could not always guarantee the same amount of State Water.

Director Chisam stated if he was asking if the City would be able to provide the water resources that it was committing to the Nipomo area and Cal Cities, the answer is yes. The City intends, over time, to enhance the reliability of the State Water project through acquiring additional entitlement water which will firm up the water allocation. In addition to that, the City has the ability to enhance the operation of the pipeline where there is close to 5,000 acre feet of additional water pipeline available through the CCWA participants to the Santa Maria turnout only. There is also water available through the open water market.

Mr. Miller stated he also read in the paper that the City was trying to bring an additional 500 acre feet of water from Carpenteria. He asked as the City expands its service and brings in additional sources of water, will the rate payers enjoy a reduction in the water rates.

Director Chisam responded with time the rate of increase, the amount of increase, or possibly a rollback or deferral of increases, may be possible as these potential water revenue sources from outside areas begin to develop.

Gordon Gill asked if the 43,000 acre feet water allocation for the City included the MOU's with Nipomo and Cal Cities.

Director Chisam stated that is the total amount of raw water resources that is available for the City to utilize. The current buildout requirement for the City was about 21,000 acre feet. Even with the water for Nipomo and Cal Cities, there will be about 20,000 acre feet available for future use.

Mr. Gill asked how that related to increased population.

Director Chisam stated there would be enough water to double the population – strictly from a "quantity" point of view.

Nancy Johnson asked why the City of Santa Maria was trying to buy water from the City of Carpenteria.

Director Chisam replied utilization of the State Water pipeline to the maximum extent possible was critical in order to maintain water quality over time. One of the challenges the City has is how to maintain and enhance the water quality. One of the ways to do that is to avail itself of additional water capacity and availability so that when Nipomo came on line in the next few years, there wouldn't be any change in the water quality associated with Santa Maria residents.

Mrs. Johnson said she had a very big problem with the residents of Santa Maria subsidizing growth in Nipomo.

Director Chisam explained that Nipomo would be paying not only for their proportionate share of the pipeline, but also the back costs associated with the pipeline, they will be paying all their proportionate share of the pipeline costs to get the water to Nipomo, as well as the variable costs. Their water will be very expensive, much more expensive than what the residents of Santa Maria are paying. There is a fixed cost for the State Water project and the more people who are paying for that cost, it will reduce the cost of

that project to the residents of Santa Maria. Therefore, Santa Maria residents will not be subsidizing Nipomo Growth.

Toru Miyoshi stated it was his understanding that the State Water entitlement throughout the State was in excess of 4 million acre feet, and today's capacity to deliver was about 2.3 million acre feet. He asked if that figure had changed. He expressed concern about the City becoming a water utility and providing water to neighboring communities in the event there was a shortfall in what the State Water project could deliver in the future.

Director Chisam stated the figures had changed, but he did not know specifically what they were at this time. There was always going to be variations in the supply. The current capacity of the State Water project was 75 percent.

Gazelle Mahler explained a situation she had encountered with property she purchased in Oceano. She asked if there was a list of water purveyors available to the public and how it was audited.

Director Chisam stated for the State Water project and all of the other projects there was a metering system and all the water that was utilized within the system was metered. He recommended she contact the County of San Luis Obispo for a list of water agencies for Oceano.

Dr. Olga Howard asked if the settlement agreement specified that the water provided to Nipomo and Cal Cities could only be used for residential and not for commercial.

Eric Garner replied that the agreement was silent on that issue.

Peter Ainsco stated he was part owner of a piece of property on the Guadalupe highway. His aunt told him he should sign the agreement. He said it seemed like a very reasonable agreement, but there were some people who did not want to sign. He asked if someone could explain why it would not be in his interest to sign the settlement agreement.

Laurie Tamura asked how much time people had to look at the total package and respond.

Jeff Dunn replied that the final date to sign the agreement was September 2nd.

Ms. Tamura asked in regard to the Twitchell Authority that is being created as part of the settlement agreement, will it be a subset to the Water Conservation District or a separate authority.

Director Chisam explained the Twitchell Management Authority will be made up of representatives from the various water purveyors, representatives from the Water Conservation District, and landowners that will sit on a board and discuss issues and projects that will be funded by the Authority. The essence of what the Authority will be is to provide projects that are not currently being performed through he Water Conservation District. The Water Conservation District will maintain its current financing and maintain their operation of the dam and maintenance efforts. The board will be made up of jurisdictions and individuals who will be paying for these costs and will be able to propose and fund those projects which will enhance and improve the yield of the project.

Jacqueline Frederick stated there were many people in the litigation who were served but never answered the litigation or hired an attorney. She asked what the issues would be in the next round of the litigation and what repercussions there would be to those people who did not sign the settlement agreement as well as those people who completely ignore the litigation and do not participate in the settlement or the trial.

Jeff Dunn stated at some point in time everyone who is a party to the case must do one of two things: they must either sign the settlement agreement; or they must appear in

court at some future date still to be determined and prove whatever water rights that party claims to have. There will be a notice that will go out to all parties who do not sign the agreement by that September 2nd deadline telling them they must appear in court. If they don't sign the settlement agreement or appear at the court trial, there will be a final judgement that will include this settlement agreement as well as the judgement following the trial. If a party is not part of either one of those groups, that party may end up with a judgement that doesn't give them recognition of water rights that were at issue in this case.

George Adam stated after reading through the agreement the issue that struck him as the key thing the lawsuit really began over was the outflow to the ocean. It seemed like every physical solution he had read, had that in it. This one does not. In a basin that has these types of levels that are at historical highs, that is the most critical thing. He asked why that wasn't included in the physical solution.

Director Chisam stated that question was probably better directed to Joseph Scalmanini, the geologist that reviewed the settlement agreement and endorsed it. He was the one who reviewed all the numbers and parameters involved in the agreement, and told the judge that it was a good agreement based on his knowledge of the groundwater basin.

There were no further public comments.

Councilmember Patino thanked the public for coming. She asked about new urban uses and the requirement that they use supplemental water.

Director Chisam explained that supplemental water was water derived from either the State Water project or return flow or actual deliveries of imported water.

Councilmember Patino asked about future litigation with the parties that did not sign the settlement agreement and why those parties were not signing the agreement.

Eric Garner explained that those parties would have to go before Judge Komar in San Jose. Judge Komar spent many days working with the parties to craft the stipulation agreement, and he believes in it very strongly.

Councilmember Mariscal also thanked everyone for coming. He said it was mentioned that the City's primary purpose was to provide the highest quality of water to the citizens of Santa Maria on a reliable delivery basis. He said he was very comfortable with the stipulated agreement and that it would give the City the protection it needed for the future. He said he had heard concerns about some of the City's agreements with Cal Cities and Nipomo. The agreement with Nipomo is not going to be subsidized by the residents of Santa Maria. They are paying the full cost plus a little bit more for the water they are buying. He asked what part of a resident's water bill was for the capital cost of the State Water project, and if that would decline after the capital costs were completely paid for.

Director Chisam replied the bonds would not be paid off until 2035. He said he would anticipate that over the next 5 to 10 years as some of the arrangements go into effect and the cash flow develops, there will be a moderation in the utility bills associated with water.

Councilmember Mariscal explained that was part of the driving force for him to approve these agreements. When the City can sell a resource that it has and really has no use for and it can be turned into cash to offset the long-term debt, then that is a good business decision. He said one of the things about the settlement agreement he really supported was the groundwater management structure which is a big benefit for the agriculture community of the Santa Maria Valley. Agricultural wells will not be metered so it gives the opportunity for agricultural to continue. He thanked Eric Garner and Jeff Dunn for the excellent representation they had given the City.

Councilmember Orach stated several years ago he and Joe Centeno had signed an agreement with the Water Conservation District. There were six or seven items that were on the table that some of the people did not agree with. Now most of those are coming to fruition in this stipulation agreement. He compared current City water costs with the costs for water prior to State Water including water rates, water softeners, salt, bottled water, water heater replacement, and hard water deposit removal.

Mayor Lavagnino thanked everyone for attending the meeting. He said he thought the stipulation agreement was going to ensure that the people who live in the City of Santa Maria will always have water. He thanked Eric Garner, Jeff Dunn and Judge Komar. He commended Director Chisam for the tremendous amount of knowledge he has on this water issue and thanked him for his hard work. Mr. Chisam would not have recommended this City Council sign this agreement if it was not fair to both sides. He said he hoped everyone saw the merit to signing the agreement and not make it go any further.

ADJOURNMENT

There being no further business to come before the City Council at this time, the meeting was declared adjourned at 8:30 p.m. by order of Mayor Lavagnino to the next regular City Council meeting on Tuesday, August 16, 2005, at 6:30 p.m. in the City Hall Council Chambers.

APPROVED

August 16, 2005
Date

Patricia DeBerry
Chief Deputy City Clerk of the City of Santa Maria and ex officio Clerk of the City Council

ATTEST: Patricia DeBerry
Chief Deputy City Clerk

S. L. Lavagnino
Mayor of the City of Santa Maria